

**Remarks of Commissioner Mignon L. Clyburn (as prepared)**  
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Good morning, everyone, and thank you, Commissioner Wise, for that warm introduction. It is great to be back at SEARUC, where there are many familiar faces, and some dynamic new ones as well. Coming here is like being home, minus the family drama. Well, on second thought, and come to think of it, coming here it is exactly like being home.

SEARUC, my bad family drama joke allows for an appropriate segue, into what I think we can all agree, we could do with less, and that is, the pull and push between federal, state, and local policymakers. We are in need of and should strive for a new era of cooperative regulation, that recognizes the states as laboratories of democracy, and your federal partners as a uniform guide where and when appropriate. So allow me to take some time this morning, to outline areas where we can work together, and other areas I feel, where states and localities should take the lead when it comes to privacy, universal service, pole attachments, rights-of-way access, and inmate calling.

We have seen many states step in after the most recent policy shifts at the federal level when it comes to broadband privacy, and this is the power of the 10<sup>th</sup> Amendment at work. When over 90% of consumers feel like they have lost control over their personal information—and if we truly believe in government by the people and for the people—then government has a role to play when it comes to the protection of those interests. While I do not believe that any in the SEARUC member region have done so, over a dozen other states have introduced broadband privacy bills and I firmly believe that these federal and state privacy efforts do not have to be combative; they can be complementary. My goal of putting #ConsumersFirst holds true for privacy as well, which for me means that people and businesses who use broadband internet service should not reside in a regulation-free zone. This particularly rings true here, since any recourse for customer harm would be subject to their providers' mandatory arbitration clauses found in the large majority of communications service contracts.

Universal service, on the other hand, is an area, where the states and the federal government, have had a long and productive partnership. Today, however, that partnership is in tremendous flux. Whether you embraced the overall action or not, when the FCC reclassified broadband as a telecommunications service in 2015, it forbore from requiring broadband contributions to the universal service fund. That laid the groundwork for solid legal authority for Lifeline broadband, and also put broadband on solid legal footing for universal service support for the future.

But now, the FCC is poised to spend billions of dollars to further build-out broadband to areas that do not have it, while at the same time remove broadband from the list of supportable telecommunications services. Say what you want about net neutrality and its principles, I believe it is a strategic error in the fight to close the digital divide, to take away our strongest legal authority, to use the universal service fund to support broadband services. Even if you believed that Title II for broadband was bad policy, which I obviously do not, reversing the

telecommunications service classification hamstrings the FCC's ability to ensure that broadband is reasonably and timely deployed in your states. It also undermines your ability to support it at a state-level as well. If your goal is expanded broadband access in your state 10 years from now, broadband as a Title II service is your best tool.

This is particularly true for Lifeline. I know many of you disagreed with our decision to adopt a streamlined federal process to allow more providers into the Lifeline program. But we need to come together and ensure that the Lifeline program remains successful for the 21<sup>st</sup> century. How can the lowest-income individuals, if they lack the means to take advantage of the most important platform for empowerment and engagement in our society, access education, find a job, or even pay their bills? Are we content to relegate poor kids to a McDonald's parking lot to do their homework every night? I think they deserve and we can do better than that.

And the best, most efficient means is with a federal solution for Lifeline entry, particularly because many state legislatures, as you know, have removed broadband as a service that is within your regulatory commission jurisdiction. Kajeet, one provider who took advantage of the Lifeline Broadband Provider certification process, said that it will now take them 25 years to make a nationwide Lifeline product play under the current construct. So are we comfortable with telling consumers, particularly those with school aged children or home-bound loved ones, that they may have to wait for decades to have a choice for Lifeline broadband service?

Now, reclassification also has potential ramifications beyond federal universal service: it also impacts state universal service. How likely is it, that states will be able to collect or disburse state-level universal service funds, if the service being supported is not actually a telecommunications service?

And, those of you with aging populations that disproportionately subscribe to legacy telecommunications services, you should really care about contribution reform. Your senior citizens are shouldering more than their share of the burden of nationwide broadband deployment. And those on pensions should not be the ones paying a 17% tax on their phone service to bring broadband to rural areas.

But, all these are solvable problems. As I have said, universal service is an area where both the state and federal governments have a long history of working together, and we need to continue to work together and get better at it. For broadband that means a supported service going forward in both state and federal universal service programs for and from where I sit, that also means retaining Title II for broadband which makes for the most solid legal footing for all of our universal service programs at the federal level. And for Lifeline, it means streamlining and improving processes for getting choice and competition into the market. In other legal contexts, we have multi-state application opportunities or reciprocity arrangements. For example, all states require non-profit organizations to register before conducting charitable solicitations in their jurisdictions. A national charity can file a unified registration statement which meets the requirements of 47 of the 50 states! Would it be mutually beneficial if we were to adopt a nationwide Lifeline ETC application in that mold, that all states would accept?

Some of the uncertainty about reclassification also extends to pole attachments. Now I know that pole attachment regulation is one area where states can opt out of the federal scheme. And yes, there is much talk at the FCC these days about tearing down barriers to infrastructure deployment. But just what happens if Title II goes away? Broadband providers, who do not also provide a cable or legacy voice service, will not be able to take advantage of the rights afforded to them under section 224 of the Act. And if there is no telecommunications service provider, even “reverse preemption” will not be of much use if attachers are looking to take advantage of the rights afforded to them by section 224.

Speaking of preemption, there is a lot of talk in Washington right now, about preempting states and localities in the context of both tower siting and rights-of-way. Just last week, I attended an event where several panelists implied that America’s leadership on 5G was dependent on getting states and localities in line, and that means preemption. But, they propose to rely on section 253 of the Act to do so. That provision can only be used, if the provider is offering a telecommunications service. I am not sure how a 5G deployment with a LTE and VoLTE fallback will qualify as telecommunications service within the meaning of the Act, if the majority’s attempt at reclassification goes through.

I have learned a lot from you and in Washington about the challenges that both communities and carriers face in getting to win-win on these issues. And while I disagree that it is the best course to promptly preempt localities who are seeking to manage their rights-of-way, that seems like the path that the FCC’s majority is preferring at this moment. That blanket preemption approach, I feel, ignores that some of the most interesting ideas in infrastructure deployment have come out of the states and municipalities. One-touch make-ready, an idea that would radically alter and streamline the make-ready process, came out of municipal legislation. And Congress, when it enacted the Communications Act and the Telecommunications Act of 1996, envisioned a complementary regulatory scheme that had states and federal authorities acting in tandem.

As you can tell, I am skeptical that moving to a world wholly free of regulations when it comes to telecommunications services is a good thing for consumers, or particularly for state or federal oversight of critical components of service delivery like quality of service and competition and consumer protections. While I am all for getting rid of regulations that are no longer necessary to protect consumers or competition, a regulation-free zone is not the answer.

As I take my seat, I would be remiss to not take this opportunity to mention once again, an area where we can work together, and that is inmate calling service. This regime represents the greatest communications injustice of our time, and it needs be addressed by each of you, if you have yet to do so.

In one of our FCC workshops on inmate calling, Darrell Baker of the Alabama PSC said, that ICS or Inmate Calling Services rates were like a balloon. If you only squeeze one side, the air will just move to the other side. We have seen that happen now that the FCC has acted. Interstate rates have come down, but intrastate rates have gone up. And sometimes the families of inmates will pay as much as \$24 for a fifteen minute call—and that is in a SEARUC member state! When a similar 15 minute intrastate call costs 45 cents, you cannot convince me that

security measures and special costs for getting phones into prisons accounts for that other \$23.55.

Now I know there are entrenched interests and for some of you inmates are not the most sympathetic constituency. But the inmates are rarely the ones paying for the service. It is the grandmother on a pension, or the single mother struggling to raise a kid or two or three on her own. Even if you are not sympathetic to the plights of these individuals, the cold, hard math is this: reforming inmate calling will actually help you and your state and local bottom lines. Your jurisdictions will spend more taxpayer dollars on incarceration, upwards of \$31,000 a year per cot, than any offsetting benefits your counties and cities receive from commissions or kickbacks on this service. Why? Because lower inmate calling rates reduce recidivism, because lower rates make it more likely that families maintain contact. The result of increased contact means that kids are more likely to behave and remain engaged in school, married inmates are more likely to stay connected to their spouse, and all of this has an impact on breaking the cradle-to-grade school prison pipeline. This is an issue that we have ignored for far too long, and this 'profit from pain' needs to stop.

So it my hope, that we recommit to working together, and that we cast aside preexisting state-federal, political or philosophical lines or divides that have been impediments to serving our communities. I am the first to admit that Washington does not have the all of the answers, and that we all benefit, when we learn from one another. And consumers are the winners when we collaborate and improve our regulatory approaches, when it comes to accomplishing our goals around competition and consumer protection. And let's recommit to finding positive paths forward on broadband deployment, universal service, inmate calling and more.

Thank you, and I look forward to answering any questions you may have if time permits.